



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

APR 30 2015

CERTIFIED MAIL NO. 7013 1090 0000 1618 1420
RETURN RECEIPT REQUESTED

Mr. Derek J. Leathers
President
Werner Enterprises, Inc.
14507 Frontier Rd.
Omaha, Nebraska 68138-3808

Dear Mr. Leathers:

Region IX of the U.S. Environmental Protection Agency (the "EPA") is issuing this letter pursuant to Section 114 of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7414. The purpose of this letter is to evaluate Werner Enterprises, Inc.'s ("Werner's") compliance status with regard to Section 2025 of the California Code of Regulations, Title 13, Article 4.5, Chapter 1, which is the California Air Resources Board's ("CARB's") "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles" (the "Truck and Bus Regulation").¹ The Truck and Bus Regulation is included in the federally-approved and federally-enforceable State Implementation Plan for the State of California.

This letter is a follow-up to EPA's CAA Section 114 letter dated June 16, 2014 ("Information Request") for which Werner's response is dated September 4, 2014 ("Response Letter"). This information request is primarily directed at Werner submitting a complete and accurate identification of their fleet.

Werner is hereby required to provide the following information requested in this letter *within fourteen (14) calendar days* after receipt of this letter. In responding to this request, Werner shall use the instructions provided in Enclosure 1.

¹ The full text of the Truck and Bus Regulation is available on the CARB website at <http://www.arb.ca.gov/msprog/onrdiesel/documents/TBFinalReg.pdf>.

- 1) Please review the list of vehicles in Appendix A to check if these vehicles should have been reported to EPA in the Response Letter. Provide the following information for each vehicle in Appendix A:
 - a) State whether Werner owns/owned the vehicle anytime between May 4, 2012 and the date of this letter (yes or no);
 - b) State whether Werner operates/operated the vehicle in California anytime between May 4, 2012 and the date of this letter (yes or no); and
 - c) If the response to request 1.a or 1.b is “yes,” explain why the vehicle was not included in the Response Letter.
- 2) Are there any other vehicles² that Werner has not provided to the EPA apart from those listed in Appendix A and the Response Letter as of the date of this information request?
 - a) If “yes,” then include such vehicles in Request 3 below.
- 3) For each vehicle that should have been included in the Response Letter (per response to Requests 1.c, and 2.above), provide the following information:
 - a) VIN;
 - b) State of vehicle registration;
 - c) License plate number;
 - d) Engine model year;
 - e) Engine family;
 - f) Assigned vehicle terminal;
 - g) If the vehicle has a diesel particulate filter (yes or no);
 - h) Date vehicle added to fleet;
 - i) Date vehicle no longer operated in California; and
 - j) Total miles operated in California during:
 - i) Calendar year (“CY”) 2012 (only from May 4, 2012 through December 31, 2012;
 - ii) CY 2013;
 - iii) CY 2014; and
 - iv) CY 2015 to the date of this information request.
- 4) For each vehicle identified in response to Request 3 above, produce supporting documentation that verifies the miles operated. Such documentation may include, but is not limited to, vehicle electronic tracking reports, records generated for the International Registration Plan, fuel tax records, or other supporting records.

² Diesel-fuel with a Gross Vehicle Weight Rating (“GVWR”) greater than 26,000 pounds driven in California between January 1, 2012 and the date of this letter.

- 5) With regard to the chart in the Response Letter that identifies the vehicles in the “For Lease” tab of Werner Enterprises TRUCKINFO.xlsx, provide the following information for each vehicle:
- a) VIN;
 - b) State of vehicle registration;
 - c) License plate number;
 - d) Engine model year;
 - e) Engine family;
 - f) Assigned vehicle terminal;
 - g) If the vehicle has a diesel particulate filter (yes or no);
 - h) Date vehicle added to fleet;
 - i) Date vehicle no longer operated in California; and
 - j) Total miles operated in California during:
 - i) CY 2012 (only from May 4, 2012 through December 31, 2012);
 - ii) CY 2013;
 - iii) CY 2014; and
 - iv) CY 2015 to the date of this information request.
- 6) Does Werner have any engine model year 1993 or older vehicles with a Gross Vehicle Weight Rating (“GVWR”) greater than 26,000 pounds in its fleet driven in California at any time from January 1, 2015 to the date of this letter? If “yes,” provide the following for each vehicle:
- a) VIN;
 - b) State of vehicle registration;
 - c) License plate number;
 - d) Engine model year;
 - e) Engine family;
 - f) Assigned vehicle terminal; and
 - g) State whether the vehicle has a 2010 model year emissions equivalent engine³ (yes or no);
 - h) Date vehicle added to fleet;
 - i) Date vehicle no longer operated in California; and
 - j) Total miles operated in California from January 1, 2015 to the date of this information request.
- 7) For each company identified in response to Request 12 of the Response Letter, specify the name of the company that was hired or dispatched during the following years. Please include any company that may been hired from the date of the Response Letter to the date of this information request.
- a) CY 2012 (only from May 4, 2012 through December 31, 2012);
 - b) CY 2013;

³ As defined in Section 2025(d)(3) of the Truck and Bus Regulation.

- c) CY 2014; and
 - d) CY 2015 to the date of this information request.
- 8) In Werner's Response Letter, the response to Request 13 was not provided. Please provide the following:
- a) The response, and
 - b) A statement of why the response was not included in the Response Letter.

If Werner seeks to withhold any document(s) based on a claim of attorney-client communications privilege or the attorney work product doctrine in its response to this information request, Werner shall provide with its response a privilege log for each document containing the following information: (i) the date, author(s), every individual to whom the document was originally sent, every individual who subsequently acquired the document, the purpose for which the document was sent to or obtained by those individuals, and the employment titles of the authors and recipients; (ii) the subject matter of the document; (iii) the privilege claimed for the document and all facts supporting the claim of privilege; (iv) the primary purpose(s), including the business purposes, for which the document was made; (v) the question(s) in this information request to which the document is responsive to; and (vi) all facts contained in the document that are responsive to a question in this information request.

The responsive information shall be accompanied by a cover letter sent via certified mail with return receipt requested to the following address:

Ms. Kathleen H. Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Attn: Roshni Brahmhatt (ENF-2-1)

Please be advised that under Section 113(a) of the Act, 42 U.S.C. § 7413(a), failure to provide the information and documents required by this letter may result in an order requiring compliance, an order assessing an administrative penalty, or a civil action for appropriate relief. Section 113(b) of the Act, 42 U.S.C. § 7413(b), provides for the assessment of a civil penalty, which has been adjusted for inflation to \$37,500 per day, for each violation of the Act. See 40 C.F.R. § 19.4 (for penalties effective after January 12, 2009). In addition, Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides criminal penalties for knowingly making any false material statement in, or omitting material information from, any report

required under the Act. The information provided by Werner may be used by the United States in administrative, civil, or criminal proceedings.

You may, if you desire, assert a confidential business information (“CBI”) claim on behalf of Werner covering part or all of the information provided to EPA in response to this letter. Any such CBI claim must conform to the requirements set forth in 40 C.F.R. Part 2, particularly 40 C.F.R. § 2.203, and contain supporting documentary evidence. In addition, any such claim must be substantiated in accordance with 40 C.F.R. § 2.204(e)(4).

Specify by page, paragraph and sentence when identifying information from a document where you make a CBI claim. Where your claim does not include all information on a page, please attach a copy of each such page with brackets around the text you claim to be CBI. If a page, document, or group or class of documents claimed by you to be CBI contains a significant amount of information which our Regional Counsel determines is not CBI, your CBI claim regarding that page, document, or group or class of documents may be denied.

You are advised that certain information may be made available to the public pursuant to Section 114(c) of the Act, 42 U.S.C. § 7414(c), and 40 C.F.R. § 2.301, notwithstanding a claim that such information is entitled to confidential treatment. Please note that emission data provided pursuant to Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. Emission data is defined at 40 C.F.R. §§ 2.301(a)(2). If no claim of confidentiality is received with your reply, the information may be made available to the public without notice to Werner.

This information request is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a “collection of information” within the meaning of 44 U.S.C §§ 3502(3) and 3518(c)(1), since it is being issued during the conduct of an investigation involving the EPA against specific individuals or entities. See also 5 C.F.R. § 1320.4.

Werner shall submit its response to this request postmarked no later than thirty (30) calendar days after receipt of this letter. All information submitted in response to this request must be certified in a signed, separate statement as true, correct, accurate, and complete, to the best of his/her knowledge, by an individual with sufficient knowledge and authority to make such representations on behalf of Werner. On the last page of your response to this information request, include the certification contained in Enclosure 2.

If Werner anticipates that it will not be able to respond fully to this request within the time period specified, Werner must submit a sworn declaration by a responsible corporate official within ten (10) calendar days after receipt of this letter specifying what information will be

provided by the allotted deadline, describing the efforts that have been/are being undertaken to obtain the remaining other responsive information, and providing a detailed schedule of when such other responsive information will be provided. Upon receipt and based upon such declaration, EPA may extend the time in which to respond to this information request. Also, please contact EPA if Werner determines that a full response to a particular request for information would require the submission of an extremely large number of documents or data files. Based upon such notification, EPA may modify the scope of the documents required to be produced.

If you have any questions regarding this request, please contact Roshni Brahmhatt of my staff at (415) 972-3995; or your attorney can contact David Kim, Office of Regional Counsel, at (415) 972-3882. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen H. Johnson", written in a cursive style.

Kathleen H. Johnson

Director, Enforcement Division

Enclosures

cc: James Ryden, California Air Resources Board
Nathan J. Meisgeier, Senior Counsel, Werner Enterprises, Inc.

APPENDIX A

VIN	License State	License Number
1FUJA6CG01PJ01442	NE	W11911
1FUJA6CVA1DAR6268	NE	158260
1FUJAPCG61PA98300	NE	167271
1XP4D49XL1CD16102	NE	163215
1FUJBBCGX2LG30673	NE	W11062
1FUJAPCG93DK48045	NE	153764
1JJV532W24L842036	NE	W10546
1FUJAPAV85DN44792	NE	146709
1FUJBBCX5LU39423	NE	167352
1FUJCRCK15PV33527	NE	165113
1FUJBBAV06PW76445	NE	W12053
1FUJBBAV06PW76459	NE	139778
1FUJBBAV16PW76521	NE	W10690
1FUJBBAV96LU24832	NE	165466
1FUJBBCX36LU96547	NE	155659
1XP7DB9X06D641423	NE	160738
1FUJA6CV37PW55887	NE	113108
1FUJA6CV67PW55883	NE	113104
1FUJBBAU57PW77169	NE	170125
1FUJBBAV27PW77162	NE	152684
1FUJBBAV37PW76795	NE	160317
1FUJBBAV57PW77169	NE	170125
1FUJBBAV67PW77178	NE	166381
1FUJBBAV77PW77285	NE	149885
1FUJBBAV87PW77053	NE	149472
1FUJBBAV87PW77128	NE	163119
1FUJBBAV97PW77031	NE	155597
1FUJBBCX7LU96773	NE	156110
1JJV532W47L008886	NE	172641
1XKADB9X47J199583	NE	162483
1XKADB9X97J199501	NE	170407
1XP5DB9X77D665601	NE	158915
1XP7DB9X07D747095	NE	169317
1XP7DB9X27D697378	ME	164658
1XP7DB9X37D665328	NE	163047
1XP7DB9X37D697227	NE	162874
1XP7DB9X37D697261	NE	0
1XP7DB9X47D664835	NE	W10700
1XP7DB9X57D664682	NE	151837
1XP7DB9X57D697374	NE	164657

VIN	License State	License Number
1XP7DB9X77D665073	NE	165822
1XP7DB9X77D747093	NE	170904
1XP7DB9X87D664837	NE	155929
1XP7DB9X97D664622	NE	165612
1XP7DB9X97D665415	NE	171129
1XP7DB9X97D697300	NE	152982
1XP7DB9XX7D665407	NE	171128
4V4NC9TH57N488351	NE	W10137

ENCLOSURE 1: Instructions

- 1) Prepare a cover letter that includes a written response to all requests referencing the request number to which each answer or document pertains. In addition, attach to the cover letter the signed certification provided in Enclosure 2.
- 2) To the extent that Werner has no responsive information or documents for any particular request, this must be explicitly stated in the response.
- 3) Where documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information is not available or in your possession and identify any source that either possesses or is likely to possess such information.
- 4) To the extent that a document is responsive to more than one request, this must be so indicated and only one copy of the document need be provided.
- 5) Please include data in response to this information request in spreadsheet format (e.g., Excel format). Provide in an electronic format rather than as images.
- 6) All responsive documents must be:
 - a) provided as an accurate and legible copy in a searchable PDF file format;
 - b) submitted on a disk (CD or DVD media); and
 - c) number stamped in sequential order (e.g. BATES stamped).

ENCLOSURE 2: Statement of Certification

[This Certification is for signature by the president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or another executive with authority to perform similar policy or decision-making functions of the corporation.]

Werner Enterprises, Inc. is submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA's") request for information, issued pursuant to Section 114(a) of the Clean Air Act, to determine whether the facility is in compliance with the Clean Air Act, including the federally-approved California Truck and Bus Regulation.

I certify that I am fully authorized by Werner Enterprises, Inc. to provide the above information on its behalf to EPA.

I certify under penalty of law that I have personally examined and am familiar with the statements and information submitted in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true, correct, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, or omitting required statements and information, including the possibility of fines and imprisonment for knowing violations.

Date: _____

Name (Printed): _____

Signature: _____

Title: _____